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COUNSEL/PARTIES OF RECORD	
FEB 17 2012	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY: _____

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 12 JOHN DAVIS TRUCKING COMPANY, INC.

13 UNITED STATES DISTRICT COURT
 14 DISTRICT OF NEVADA

15 NATIONAL RAILROAD PASSENGER
 16 CORPORATION,

17 Plaintiff,

18 v.

19 JOHN DAVIS TRUCKING COMPANY,
 20 INC., a Nevada corporation,

21 Defendant.

22 JOHN DAVIS TRUCKING COMPANY,
 23 INC., a Nevada Corporation,

24 Counterclaimant,

25 v.

26 NATIONAL RAILROAD PASSENGER
 27 CORPORATION, UNION PACIFIC
 28 RAILROAD COMPANY, and DOES 1-5,

Counter-Defendants.

Case No. 3:11-cv-00461 HDM VPC

**JOINT CASE MANAGEMENT
STATEMENT**

Date: February 21, 2012

Time: 9:00 a.m.

Ctrm: 1

Judge: The Honorable Valerie P. Cooke,
U.S. Magistrate Judge

LOMBARDI, LOPER & CO NANT, LLP
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 Oakland, CA 94612 -3541

1 TO THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE:

2 COME NOW the parties who have appeared in this action and submit the following Joint
3 Case Management Statement pursuant to the Minutes of the Court filed on November 8, 2011
4 (Doc 60).

5 **CASE MANAGEMENT REPORT**

6 **Issues Pertaining to Locomotive Videos and Event Recorder Data**

7 On January 17, 2012, counsel for John Davis Trucking Company raised the following
8 two issues with counsel for National Railroad Passenger Corporation ("Amtrak"). Below is a
9 description of the two issues and their status:

10 1. **Locomotive Videos:**

11 John Davis Trucking Company seeks the "original" locomotive video images because
12 it claims the encryption format in which they were produced to it makes meaningful
13 analysis of the video impossible. Amtrak disagrees. Furthermore, according to John
14 Davis Trucking, the encryption software takes over all operations on the computer to
15 which the video disc is installed, and any attempt to analyze the video images results
16 in an error message and the cessation of the play. Amtrak disagrees. John Davis
17 Trucking also claims the video cannot be stopped and started frame by frame and that
18 there is no manner in which to analyze the speed rate at which the images were
19 recorded or are being played. It further claims the image quality of the videos is poor,
20 particularly given the high resolution quality of the camera system on-board the
21 locomotives. John Davis Trucking claims critical information about the position of
22 the crossing gates is not visible. It believes these difficulties appear due to the
23 encryption software into which Amtrak or its subcontractor placed the video images.
24 Amtrak disagrees.

25 **John Davis Trucking's Additional Claims:**

26 John Davis Trucking claims there is no way to verify that the video in question is
27 genuine. Amtrak disagrees. It claims the encrypted copy provided to defendant
28 includes only Amtrak's logo and the date of the accident. It also claims it is

1 impossible for a forensic specialist to analyze the video for genuineness or for any
2 other feature of importance, such as a frame-by-frame study of the video at the times
3 preceding, during, and following the incident. John Davis Trucking further claims the
4 disc prevents any forensic analysis which could detect tampering if such has occurred.
5 Amtrak disagrees. It argues the disc provided by Amtrak is not a video file in any
6 recognized format. It is an ".exe" file that contains its own software which runs the
7 disc and supersedes the computer's controls. It claims Amtrak has thus far refused to
8 provide the video file from which the encrypted disc was made, or the video data as
9 originally recorded by Amtrak's on board digital video recorder. According to John
10 Davis Trucking, the encryption provided to John Davis Trucking was made on
11 November 1, 2011, shortly after the Court's order directing that the video be produced.
12 John Davis Trucking claims that necessarily means that the encryption was made from
13 a video file in native form which could, and should, have been produced. According
14 to John Davis Trucking, the encrypted disc wholly fails to comply with the
15 requirements of FRCP 34, particularly in light of the 2006 Amendment thereto. (See
16 the Official Commentary to that Amendment.) It alleges the disc Amtrak produced is
17 of such poor quality it is impossible to determine whether the gates were down for the
18 full five seconds minimum time preceding arrival of the train at the crossing, as
19 required by federal regulation. Amtrak disagrees with all the contention above.

20 Status:

21 As noted above, Amtrak disagrees with John Davis Trucking's assessment of the
22 locomotive video. Notwithstanding, the parties have met and conferred and are
23 continuing to meet and confer on these issues. Amtrak is currently investigating
24 whether there is a better quality version of the locomotive videos in existence. Based
25 on the information presently known to Amtrak's counsel, the locomotive video camera
26 is set to record images at 30 frames per second. The multiple copies of the locomotive
27 video provided to John Davis Trucking all display images at 30 frames per second.

28 Amtrak is willing to display the video to the Court so that the Court may judge for

1 itself the quality of the video footage. Amtrak contends the video quality is very good,
 2 and more importantly, conclusively shows that the crossing gates were down prior to
 3 the lead locomotive entering the crossing. Given that the John Davis Trucking tractor
 4 struck the fourth train car (the second car behind the two locomotives), the locomotive
 5 mounted camera would never have captured the impact because the lead locomotive
 6 had cleared through the crossing approximately 3-4 seconds before impact.

7 Nevertheless, Amtrak is working on obtaining an unencrypted copy of the locomotive
 8 videos and has informed John Davis Trucking that it is working on obtaining this
 9 copy. As to John Davis Trucking's contention regarding FRCP 34, Amtrak contends
 10 FRCP 34 does not apply as Amtrak has not received any Request for Documents from
 11 John Davis Trucking.

- 12 2. Event Recorder Data: John Davis Trucking Company also seeks the "original" event
 13 recorder data because it believes the event recorder device on-board both the lead and
 14 trailing locomotives are of a type that are susceptible to manipulation.

15 Status:

16 The parties have met and conferred on this issue and this issue has since been
 17 resolved. Amtrak has provided John Davis Trucking an additional copy of the event
 18 recorder data it previously sent, but with metadata showing the date and time the
 19 event recorder data were downloaded.

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2 Request to Vacate Case Management Conference

3 The parties stipulate to vacate the Case Management Conference scheduled for February
4 21, 2012 at 9:00 a.m.

5 DATED this 16th day of February, 2012.

6 LAW OFFICES OF MICHAEL B. SPRINGER, PC

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8 By: /s/ John D. Moore

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15 NATIONAL RAILROAD PASSENGER
16 CORPORATION and Counterdefendant
17 and Counterclaimant UNION PACIFIC
18 RAILROAD COMPANY

19 DATED this 16th day of February, 2012.

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32 RAILROAD COMPANY

33 DATED this 16th day of February, 2012.

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[PROPOSED] ORDER

Per the parties Joint Case Management Statement, the Court hereby vacates the Case Management Conference scheduled for February 21, 2012 at 9:00 a.m. in Courtroom 1.

IT IS SO ORDERED.

DATED: February 17, 2012

By:



THE HONORABLE VALERIE P. COOKE
UNITED STATES MAGISTRATE JUDGE

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